



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 3, 1998

Ms. Joni M. Vollman  
Assistant General Counsel  
Office of the District Attorney  
Harris County  
201 Fannin, Suite 200  
Houston, Texas 77002-1901

OR98-0884

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114756.

The Harris County District Attorney (the "district attorney") received a request to review and copy all records pertaining to the arrest, investigation and indictment of Willie Shannon. You state that the district attorney will disclose certain documents to the requestor. You seek to withhold from required public disclosure portions of the requested information based on sections 552.101, 552.103 and 552.108 of the Government Code. You have submitted a representative sample of the information the district attorney seeks to withhold from disclosure.<sup>1</sup>

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). Section 552.103(b) provides:

For purposes of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.

You state that the requestor "implies that he has been appointed to represent Mr. Shannon in an article 11.071 habeas review." We have reviewed the requestor's letter and agree that the requestor so implies. We therefore believe that the district attorney reasonably anticipates litigation. In addition, we believe the submitted records relate to the anticipated litigation. Accordingly, we conclude that the district attorney may withhold the records from the requestor based on section 552.103.

If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). However, portions of the information that are confidential by law must not be released even at the conclusion of the litigation. Gov't Code §§ 552.101 (excepting information made confidential by law); .352 (providing criminal penalties for release of confidential information).

In light of our conclusion under section 552.103, we need not consider your other claims at this time. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/rho

Ref.: ID# 114756

Enclosures: Submitted documents

cc: Mr. Michael B. Charlton  
4515 Yoakum  
Houston, Texas 77006  
(w/o enclosures)